

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of PATRICE LAVONN'E
McINTOSH, Minor.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

TANIKA DANIELLE McINTOSH,

Respondent-Appellant,

and

JARVIS BUTTS,

Respondent.

UNPUBLISHED

July 17, 2003

No. 242559

Wayne Circuit Court

Family Division

LC No. 95-335417

Before: Hoekstra, P.J., and Fitzgerald and White, JJ.

PER CURIAM.

Respondent-appellant (respondent) appeals as of right the order terminating her parental rights to the minor children under MCL 712A.19b(c)(i), (g) and (j).¹ We affirm.

Respondent first claims that the trial court erred by finding that petitioner had complied with the requirements of the Americans with Disabilities Act (ADA), 42 USC 12191 *et seq.* Respondent is mentally handicapped with little or no reading comprehension. This Court noted in *In re Terry*, 240 Mich App 14, 24; 610 NW2d 563 (2000), that mental retardation is a “disability” under the ADA. However, the Court went on to hold that while the ADA requires a public agency such as the FIA to make reasonable accommodations for persons with disabilities so that they can receive the benefits of public programs, “a parent may not raise violations of the

¹ It appears that MCL 712A.19b(c)(ii) was mistakenly cited in both the petition and the trial court’s bench opinion. All parties on appeal agree that the court actually relied on MCL 712A.19b(c)(i).

ADA as a defense to termination of parental rights.” *Id.* at 25. Following *Terry*, we conclude that respondent’s claim of ADA violations does not supply grounds to challenge the order terminating her parental rights. Respondent has identified no accommodation that was refused. In any event, the record indicates that respondent was offered services in her home to accommodate her disability. Thus the trial court did not clearly err by finding that the petitioner complied with the requirements of the ADA.

Respondent also claims that the lower court clearly erred by finding that grounds for termination existed. We disagree. The evidence was sufficient to show that the conditions that led to adjudication continued to exist. At the time of adjudication, evidence was presented that respondent still had contact with and would “whip” her older children, to whom her parental rights had previously been terminated, and would argue with them as if she were their age. She was volatile towards her social worker as well. The core condition underlying the adjudication was respondent’s mental and emotional instability, which she does not recognize and which has not been ameliorated by therapy.

The evidence was also sufficient to establish that the minor child would likely be harmed if returned to respondent. The psychological report relied on by the trial court indicated that, with any stress, respondent would be likely to neglect, if not abuse, her children. A more recent report indicated that respondent was often very emotional and hostile, and did not benefit from the therapeutic process. Because there is no evidence to indicate that respondent has successfully addressed the emotional and mental instability that impedes her ability to adequately parent, the trial court did not clearly err by terminating respondent’s parental rights on this basis.

We need not consider whether there was clear and convincing evidence regarding the other grounds because only one ground need be established.

Finally, the trial court did not clearly err by finding that termination was not contrary to the best interests of the child. The child is thriving in foster care and does not recognize respondent as her mother. The evidence supports the finding that respondent will not be able to adequately parent in the reasonable future given the apparently intractable nature of her mental instability, particularly because she denies any emotional or mental problems. The minor child has been in foster care since March 1999, and she is entitled to permanency in her life. *In re Trejo*, 462 Mich 341, 364; 612 NW2d 407 (2000).

Affirmed.

/s/ Joel P. Hoekstra
/s/ E. Thomas Fitzgerald
/s/ Helene N. White